

**EXHIBIT
C**

In the Matter Of:

IN RE: PORK ANTITRUST LITIGATION

SHAYLE SHAGAM

June 01, 2022



1 MR. LISWELL: Brooks Liswell on
2 behalf of USDA.

3 MR. SIMON: Jeremy Simon, U.S.
4 Attorney's Office, on behalf of USDA.

5 MS. COTTRELL: And then if it's
6 okay, I think the rest of the appearances
7 were going to email in.

8 THE VIDEOGRAPHER: The court
9 reporter is Laurie Donovan and will now swear
10 in the witness, after which we can proceed.

11 * * * * *

12 Whereupon,

13 SHAYLE D. SHAGAM,
14 having been first duly sworn, testified
15 upon his oath as follows:

16 EXAMINATION BY COUNSEL FOR DEFENDANT CLEMENS

17 BY MS. COTTRELL:

18 Q All right.

19 A Good morning.

20 Q Could you state your name for the
21 record?

22 A Shayle Shagam.

23 Q And we have noticed your deposition as
24 both an individual deposition and a Rule 30(b)(6)
25 deposition.

30(b)(6)

16

1 Are you aware of that?

2 A I have been made aware of that, yes.

3 Q And for purposes of today, I'm intending
4 to ask you questions in your personal capacity.
5 If we want to pivot over to that 30(b)(6), I'll
6 let you know.

7 Does that sound okay?

8 A That's fine.

9 MR. SIMON: That's fine. I just
10 ask, before you pivot to the 30(b)(6), to
11 make sure it's clear on the record.

12 MS. COTTRELL: Sounds good.

13 BY MS. COTTRELL:

14 Q Okay. I know you've been deposed
15 before, right?

16 A Yes.

17 Q If I ask you a question that you don't
18 understand, just let me know, and I'll try to
19 rephrase.

20 Sound fair?

21 A Okay.

22 Q I'll ask you to answer yes or no as
23 opposed to shaking your head so our court reporter
24 can take it down.

25 Sound fair?

1 A Yes.

2 Q There might be some objections today.
3 Unless there is an instruction by your lawyer not
4 to answer, you still have to answer the question,
5 even though there's an objection.

6 All right?

7 A Okay.

8 MS. COTTRELL: All right. If we
9 could pull down Tab 0, which I'm going to
10 mark as Exhibit 1.

11 (Exhibit 1 was marked for
12 identification.)

13 BY MS. COTTRELL:

14 Q Let me know, after you have a minute to
15 look at it, if you recognize Exhibit 1 to be a
16 copy of your bio.

17 A It is.

18 Q Is Exhibit 1 an accurate reflection of
19 your work experience?

20 A It is.

21 Q Did you prepare Exhibit 1?

22 A I did.

23 Q Let me ask you this: Have you ever
24 worked for a pork producer or a pork packer?

25 A No, I have not.

1 Q And you understand this lawsuit is being
2 brought against pork packers?

3 A I do.

4 Q Fair to say that you're independent at
5 the USDA, you don't have a stake either way in who
6 wins this case?

7 A No, I do not.

8 Q How long have you been at the USDA?

9 A I started at the USDA in November of
10 1996. Excuse me. 1986.

11 Q Oh, a while then.

12 A Yes.

13 Q And what do you do for the USDA?

14 A In my current capacity, I am chairman of
15 the estimates committees for livestock, dairy and
16 poultry, which is responsible for putting out
17 USDA's official monthly forecasts of production,
18 trade and prices for the various meat components,
19 livestock, bulk hogs, chickens, turkeys, eggs,
20 lamb, veal, and milk and dairy products.

21 Q And so just to break that down, is it
22 fair to say that you're in charge of forecasting
23 what pork and hog supply will be in the future?

24 A I oversee the --

25 MR. RISSMAN: Objection.

1 THE REPORTER: Who made the
2 objection? I'm sorry. Who made the
3 objection?

4 MR. RISSMAN: Josh Rissman. I'll
5 be making -- you can assume it's me if it's
6 coming from Zoom.

7 THE REPORTER: I can't see your
8 face, so I don't know who is talking.

9 BY MS. COTTRELL:

10 Q Do you want me to reask?

11 A Please.

12 Q Okay. I know. I think it's mostly
13 going to be Mr. Rissman. Probably we can assume
14 it unless someone says it's not.

15 I just was wondering: Is it fair to say
16 that while you have been at the USDA, you've had
17 responsibilities for forecasting what pork and hog
18 supply will be in the future?

19 A That is correct.

20 MR. RISSMAN: Objection.

21 BY MS. COTTRELL:

22 Q And I guess my question would be:
23 You've been at USDA since '86, so have you had
24 responsibilities for forecasting pork and hog
25 supply that whole time, from '86 to the present?

1 A Not in its entirety. I was with the
2 economic research service for 12 years. I mainly
3 dealt with international trade forecasting, more
4 on the, more on the beef side than on the pork
5 side.

6 Q So how many years would you say you've
7 had some role in terms of forecasting hog and pork
8 supply and price?

9 A Pretty close to 36 years.

10 Q Okay, and you mentioned forecasting each
11 month, I think.

12 A That is correct.

13 Q Is that known as the WASDE?

14 A That is correct.

15 Q Do you also perform longer term
16 forecasting?

17 A We do. We perform an annual forecast.
18 What we do is a baseline forecast, which is a
19 conditional forecast, for ten years, every -- it's
20 changed over the years, but generally around
21 October/November.

22 Q Do you ever interact with economists at
23 FAPRI?

24 A Yes.

25 Q And what's the nature of those

1 interactions?

2 A They provide an occasional -- they
3 provide a baseline, and we are, on occasion, asked
4 to comment on the forecasts.

5 Q And just to help a jury who might watch
6 this in the future, a baseline by FAPRI is what?

7 A That would also be a ten-year forecast
8 of many of the same commodities that we forecast
9 as part of our baseline, but it's not, it's not
10 exactly the same. I mean they have different
11 levels of detail, and they look at a couple of
12 different aspects than we do in our normal
13 baseline.

14 Q And how many -- just to get a sense of
15 like how much time you spend thinking about, you
16 know, these forecasts, how many hours a week are
17 you working on the forecasts in the area of, you
18 know, agriculture economics?

19 A Within the WASDE, the majority of my
20 time. I mean I, day to day, look at data, look at
21 meeting our goals, hear what, what other analysts
22 are thinking, and then, of course, ahead of the
23 normal WASDE process, I start putting my forecast
24 together.

25 Q So when you say "majority" of your time,

1 BY MS. COTTRELL:

2 Q And is the primary reason that you're
3 saying, back in winter of '06, hey, looking
4 forward, we think there's going to be some
5 production cuts because of high feed prices?

6 MR. RISSMAN: Object to form.

7 MR. BERGMAN: Foundation
8 objections.

9 THE WITNESS: That was likely one
10 of the reasons. I would have to go back and
11 actually look and see, you know, what
12 assumptions were made about economic growth,
13 and again, because you also have to consider
14 that, you know, you don't just produce the
15 meat and put it out there. I mean there is a
16 demand component about how much -- how people
17 are willing to pay for the meat and their
18 ability to pay for the meat and how the
19 meat -- different species mix amongst each
20 other.

21 So it's a, it's a two-way -- it's a
22 bidirectional analysis. You're looking at
23 the higher cost facing the producer, you're
24 also looking at, you know, what is happening
25 on the demand side that would feed back the

1 prices that packers would be willing to pay
2 for those, for those animals.

3 BY MS. COTTRELL:

4 Q And you just used two terms that I want
5 to clarify, which is "packer" and "producer," and
6 I'm focused in the pork sector right now.

7 Can you just describe for me, when you
8 use the term "producer," what you're referring to,
9 and then what you mean when you say "packer"?

10 A Sure. When we talk about a producer, we
11 are talking about the unit that produces the hogs,
12 that raises the sows, that farrows the sows,
13 produces the piglets, that raises the piglets to
14 market weight.

15 Q So like a farmer?

16 A It could be a farmer. It could also be
17 a company that contracts out. It's not
18 necessarily a farmer in the traditional sense that
19 we -- you know, from the 1960s. There are farmers
20 that work on contract -- producers that work on
21 contract to companies that are also vertically
22 integrated.

23 So they could be the packers, and by
24 "packers," I am using the companies that are
25 providing the facilities, buy the live animals or

1 arrange for the live animals to be delivered to
2 the slaughter plant, kill those animals, and then
3 sell the meat further on up the, up the chain.

4 Q And I'm familiar with the chicken
5 industry, as I know you are, too. Could you just
6 describe for me, when we think about these
7 dynamics of packer, producer, what the differences
8 are between the chicken industry and the level of
9 vertical integration there versus the pork
10 industry?

11 A Sure.

12 MR. RISSMAN: Object to form.

13 THE WITNESS: Generally, it would
14 appear that the -- there is more vertical
15 integration within the chicken industry than
16 there is within the pork industry. The pork
17 industry has consolidated over time. In my
18 history being with USDA, the number of
19 producers has declined, contract production
20 has increased, but there are still
21 independent hog producers.

22 BY MS. COTTRELL:

23 Q When you use -- and just again to
24 clarify the terms, so when you use today the term
25 "producer," are you referring to the individuals

1 who are working on the farms, whether they're
2 contracted out or not, the ones who are working on
3 the farms producing the animals?

4 A Yes, when I, when I use the term --

5 MR. RISSMAN: Object to form.

6 THE WITNESS: Sorry. When I use
7 the term "producer," I am referring to the
8 individuals who are responsible for the, the
9 production of the live animals, not the meat.

10 The structure of the industry is
11 such that you may be a -- some, some, some
12 operations solely produce piglets, other
13 operations solely take those piglets and feed
14 them out to market weight, and some, some
15 units produce pigs from birth to, to
16 slaughter.

17 BY MS. COTTRELL:

18 Q And in the pork industry -- and I think
19 you alluded to this before, but just to sort of
20 break down the buckets, in the pork industry, some
21 companies own the processing facilities and own
22 hogs, right?

23 A That's correct.

24 Q Some companies only own the processing
25 facility and own no hogs; is that right?

1 BY MS. COTTRELL:

2 Q No problem. Look wherever you want, but
3 page 3 is on pork.

4 A Thank you.

5 Okay. Yes. So in 2008, they were
6 facing higher -- they were facing higher feed
7 prices, right.

8 Q And on that first page again at the
9 middle of the paragraph, it says, "The economic
10 weakness is expected to continue to exert downward
11 pressure on the meat sector through weak demand
12 and, in the face of poor returns, production of
13 meat from each major livestock and poultry
14 category is forecast to decline for the first time
15 since 1973."

16 Do you see that?

17 A I do.

18 Q Do you -- there's a reference here that
19 you're making to 1973. What's that reference to
20 1973, if you remember?

21 A I believe that that was the first time
22 that all specie meats declined simultaneously.

23 Q And was the next time that all meat
24 production declined simultaneously in '08 and '09?

25 MR. RISSMAN: Object to form.

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1 THE WITNESS: I would have to check
2 the data. I don't -- I mean that was it. At
3 the time, that is what we were forecasting.

4 BY MS. COTTRELL:

5 Q You, at the -- let me just unpack it to
6 make sure my question is clear.

7 As of 2009, the USDA was forecasting a
8 reduction in production for all the major
9 livestock sectors for the first time since '73?

10 A Correct.

11 MR. RISSMAN: Object to form.

12 BY MS. COTTRELL:

13 Q I mean do you recall whether or not feed
14 prices also spiked in '73?

15 MR. RISSMAN: Object to form and
16 foundation.

17 THE WITNESS: No, I don't.

18 BY MS. COTTRELL:

19 Q Okay. You don't recall the
20 circumstances that led to that?

21 A It was -- no. That would have been
22 before -- I was actually still in high school at
23 that time.

24 Q You weren't forecasting? You've been
25 doing this for 30 years, you know?

1 Okay, and we know that in '08 and '09,
2 the U.S. was experiencing the Great Recession,
3 right?

4 A Correct.

5 MR. RISSMAN: Object to form.

6 BY MS. COTTRELL:

7 Q In '08, do you recall that corn prices
8 spiked to about seven bucks a bushel?

9 MR. RISSMAN: Object to form and
10 foundation.

11 THE WITNESS: Yes.

12 BY MS. COTTRELL:

13 Q And both those things, the Great
14 Recession and the high feed price spike, is
15 something the USDA said this is going to have an
16 impact on livestock supply?

17 MR. RISSMAN: Object to form.

18 MR. BERGMAN: Objection.

19 THE WITNESS: That's correct.

20 BY MS. COTTRELL:

21 Q Can you think of any -- just let's think
22 of 2000 to 2007. Can you think of anything
23 comparable to the Great Recession between 2000 and
24 2007?

25 MR. RISSMAN: Object to form.

1 MR. BERGMAN: Objection; form.

2 THE WITNESS: In terms of -- it's,
3 it's -- I mean obviously -- I mean just
4 remembering my history, I mean 2003 --
5 excuse me -- 1973, 1974, you had the energy
6 crisis, so I mean I believe there was a
7 recession during that period of time. I
8 couldn't tell you whether it was better or
9 worse.

10 BY MS. COTTRELL:

11 Q What about 2000 to 2007; do you recall
12 any GDP drop that's comparable to the Great
13 Recession?

14 MR. RISSMAN: Objection.

15 THE WITNESS: I can't remember.

16 BY MS. COTTRELL:

17 Q Do you recall anything close to the
18 price spikes we saw in '08, '09, '10, '11 and '12,
19 between that 2000 and 2007 time period?

20 MR. RISSMAN: Object to form.

21 MR. BERGMAN: Objection.

22 THE WITNESS: I can't recall,
23 though, again, I would have to say that in
24 2011, '12, we were facing '12, '13,
25 especially we were facing drought, which

1 would have an impact on feed price; we would
2 have had also, as we discussed earlier, an
3 impact on forage supplies for cattle.

4 BY MS. COTTRELL:

5 Q Under "2008 in Recap," the second
6 sentence says, "Much of the increase was the
7 result of herd and flock liquidation, as producers
8 responded to dry conditions, high prices of inputs
9 and declining domestic and international demand."

10 Was this -- do you know; was this a
11 reference to beef, or is it a reference to all
12 livestock, including pork?

13 A The fact that it says "herd and flock
14 liquidation," I would assume it covered all,
15 covered all species of meats.

16 Q So can you just break that down? When
17 you use the term "liquidation" in the pork sector,
18 what are you referring to?

19 A You -- we start with an inventory of
20 animals, which is the number of animals on hand at
21 a given time, which is given to us by NASS. So a
22 liquidation would be a reduction in the number of,
23 of animals of any one of those species.

24 Q And is it -- I guess I'm just wondering.
25 Is there any significance to using the term

1 "liquidation" versus "a decrease in production"?

2 Is there a mechanism here?

3 A No, not really. We just -- liquidation
4 would simply -- we use it just to mean a decline
5 in the number -- more animals are going to
6 slaughter. The numbers of the animals are
7 declining.

8 Q So now if we go to page 3, to pork
9 production, the title there is "Pork Production to
10 Decline."

11 A Yes.

12 Q And it says, "After almost four years of
13 generally positive returns for U.S. hog
14 producers," and I want to pause there.

15 Do you recall that hog producers had
16 positive returns from 2003 to 2007?

17 MR. RISSMAN: Object to form.

18 MR. BERGMAN: Foundation objection
19 as well.

20 THE WITNESS: I can't recall that
21 that was the case, though I suspect that if I
22 had written it, that there was evidence that
23 would have indicated.

24 We use a series of returns
25 published by Iowa State University monthly,

1 to reduce production.

2 MS. COTTRELL: Okay. Tab 62, and
3 Tab 62 will be Exhibit 8.

4 (Exhibit 8 was marked for
5 identification.)

6 BY MS. COTTRELL:

7 Q Let me know if you recognize Exhibit 8
8 to be a presentation by the World Agricultural
9 Outlook Board titled "Outlook for U.S. Livestock
10 and Poultry in 2010" by Joel L. Greene.

11 A I do.

12 Q Do you know Mr. Greene?

13 A I do.

14 Q You all worked together?

15 A He was my deputy for a number of years.

16 Q He reported to you?

17 A Yes.

18 Q To the best of your knowledge, is
19 Exhibit 8 a true and accurate copy of the
20 presentations made on the USDA Outlook for
21 Livestock and Poultry in 2010?

22 A Yes, it is.

23 Q Prepared and kept in the regular course
24 of USDA's business?

25 A It was.

1 Q Would this be like the type of
2 presentation that would happen at that conference
3 you talked about?

4 A It is.

5 Q And if you look with me, page 3, it says
6 "Weak Demand in 2009 Impacts the Meat Sector," and
7 then the last bullet says "recession compounds
8 losses for the sector."

9 A Yes.

10 Q Can you just tell me what's being
11 portrayed on the slide? What are those points
12 getting at?

13 A Well, the first is --

14 MR. BERGMAN: Object.

15 THE REPORTER: What was the
16 objection?

17 MR. BERGMAN: Objection; foundation
18 and form from Mr. Bergman.

19 THE WITNESS: Well, the first is
20 the producers were likely losing money or
21 possibly just have very, very weak returns,
22 which was the high feed prices that we
23 discussed earlier, and those were expected to
24 carry into their production decisions in
25 2009.

1 The recession that we discussed
2 would have had impact on meat demand, which
3 would have been pushing from the other end to
4 reduce the prices, likely reduce prices for
5 pork, given the supplies, and then work its
6 way back down the chain to lower hog prices.

7 BY MS. COTTRELL:

8 Q All right, and if you jump with me to
9 slide 4, it says "Meat Production Falls in 2009,"
10 and then it says "beef, pork, broiler meat and
11 turkey."

12 A Yes.

13 Q Are these forecasts, or is this -- at
14 this point in time? We're only in February of --
15 we're in February of 2010, so these are -- excuse
16 me -- these are looking backwards?

17 A That's correct.

18 Q Okay. So fair to say that it's not just
19 in pork that we saw a reduction in supply, but we
20 saw it across all the proteins?

21 MR. RISSMAN: Object to form.

22 THE WITNESS: Yes.

23 BY MS. COTTRELL:

24 Q Are there commonalties across all those
25 proteins that would lead all of them to be

125

1 reducing supply?

2 MR. RISSMAN: Object to form.

3 THE WITNESS: Again, all of them
4 are reliant on feed prices, all of them are
5 reliant on income from the demand side, so,
6 you know, in that respect, those
7 commonalities, the costs facing all of those
8 producers would be higher, and the cost --
9 and the returns or the prices received for
10 those animals might have been -- again,
11 without looking at the actual numbers, yeah,
12 the prices for those animals would have been
13 lower as well.

14 BY MS. COTTRELL:

15 Q If you go to the next slide, it actually
16 says at the top "Livestock and Poultry Prices
17 Lower in 2009."

18 Do you see that?

19 A I do.

20 Q And it says "Percent Change, 13.8."
21 What does that 13.8 represent?

22 A It means that prices fell 13.8 percent
23 between the average, the average annual hog price
24 fell between -- fell 13.8 percent between 2008 and
25 2009.

1 A That's correct.

2 MR. RISSMAN: Object to form.

3 BY MS. COTTRELL:

4 Q Is this that cyclicalality that you talked
5 about before that we see these periods of
6 expansion and retraction?

7 MR. BERGMAN: Form and foundation
8 objections.

9 THE WITNESS: Yes.

10 BY MS. COTTRELL:

11 Q Since you've been in this business since
12 1986, have we seen a similar pattern of increases
13 followed by decreases and increases followed by
14 decreases?

15 MR. RISSMAN: Object to form and
16 foundation.

17 THE WITNESS: Yes. As I mentioned
18 earlier, the change in the structure of the
19 industry, the fact that producers are more or
20 less willing to come out of, you know, go in
21 and out of the business has changed the
22 nature of it, but you do get these periods of
23 expansion followed by -- which usually lasts
24 a couple of periods, followed by a period of
25 expansion.

1 BY MS. COTTRELL:

2 Q Do you remember -- I'm going to tap your
3 memory again on these diseases -- something called
4 the circovirus?

5 A I do.

6 Q And do you remember the circovirus
7 impacting hog production to some extent in the
8 2000s period?

9 A It did, yes.

10 Q And then am I right that at some point
11 there was a vaccine for the circovirus?

12 A That is correct.

13 Q And did that vaccine lead to an increase
14 in hog production?

15 A It did.

16 Q Is that increase in hog production what
17 we see here in 2007, that big spike?

18 MR. BERGMAN: Foundation and form.

19 THE WITNESS: I cannot remember the
20 exact date of it, but it is likely the case,
21 yes.

22 BY MS. COTTRELL:

23 Q Can you think of any other reason for
24 that big spike in '07?

25 A No.

1 MR. RISSMAN: Form and foundation.

2 THE WITNESS: No, I cannot.

3 MS. COTTRELL: Okay. Keep this guy
4 up, keep them here and set them right here if
5 you want, and let's take a look at Tab 256.

6 (Exhibit 14 was marked for
7 identification.)

8 BY MS. COTTRELL:

9 Q We're going to walk down Memory Lane
10 here.

11 Okay. I'm handing you what's been
12 marked as Exhibit 14, which has your name on it.
13 Do you recognize Exhibit 14 to be an Outlook for
14 Livestock and Poultry dated all the way back in
15 time, February 21st of 2003?

16 A I do.

17 Q Created and kept in the regular course
18 of business?

19 A It was.

20 Q Accurate to the best of your knowledge?

21 A It is.

22 Q So if I look -- yes. So if I look, I
23 want to look at 2002 and 2003. So in 2002 we see
24 an increase in hog production, and then by '03,
25 this USDA chart, at least, suggests there was a

1 Q There could be market formula purchases,
2 for example?

3 A That's correct.

4 Q But at the end of the day, what that
5 75 percent represents are packers negotiating with
6 hog producers to buy those hogs?

7 MR. RISSMAN: Object to form.

8 MR. BERGMAN: Foundation and form
9 objections.

10 THE WITNESS: Well, not
11 necessarily. I mean, again, because in some
12 cases it may be a formula. I mean they've
13 agreed upon a formula at a previous time, and
14 that formula has various cost components or
15 some sort of basis in what happens in the
16 market, but it's not, you know, it's not
17 negotiated at the time the individual sells
18 the hogs.

19 BY MS. COTTRELL:

20 Q Right, so they could be contracts, for
21 example, for a year period of time that set the
22 price, for example?

23 A Correct.

24 MR. RISSMAN: Object to form.
25

1 BY MS. COTTRELL:

2 Q And my question is inarticulate, but
3 it's more simplistic. It's just in this industry,
4 in the pork industry, approximately 75 percent of
5 those hogs that are slaughtered are being
6 purchased by packers from producers?

7 MR. BERGMAN: Form and foundation.

8 MR. RISSMAN: Object to form;
9 mischaracterizes the document.

10 THE WITNESS: They are being
11 purchased from, from -- by packers. I
12 don't -- again, it's a question of how -- you
13 know, the ownership, yeah, they've been
14 purchased from a producer, not a hog that had
15 been owned by the, by the, by the packer
16 itself.

17 BY MS. COTTRELL:

18 Q And is this, is this a big difference
19 from the chicken industry in terms of the
20 ownership structure of the, of the animal?

21 MR. RISSMAN: Object to form.

22 MR. BERGMAN: Form and foundation
23 objections.

24 THE WITNESS: It's my understanding
25 that there's a larger proportion -- or excuse

1 me -- a smaller proportion of chicken from
2 independent producers.

3 BY MS. COTTRELL:

4 Q The chicken industry, for the most part,
5 is what I call vertically integrated?

6 A That's correct.

7 Q Meaning they own the chicken from start
8 to finish?

9 A Correct.

10 Q And from this table, it looks like a
11 decent percentage of the hog industry is not
12 vertically integrated?

13 MR. RISSMAN: Object to form.

14 MR. BERGMAN: Objection.

15 THE WITNESS: A portion of it --

16 MR. RISSMAN: Mischaracterizes the
17 document.

18 THE WITNESS: A portion of it is
19 not, is not owned by the packers. Again,
20 it's difficult to say what, you know, how
21 those -- you, you may be producing hogs on
22 contract to the packer. Now, whether --
23 again, I'm not an expert on this, so I
24 couldn't tell you whether, you know, a
25 contractee, again, if they're considered